UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,568	07/03/2001	Arvind Gupta	42390P11139	2719

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025

EXAMINER
VU, TUAN A

ART UNIT	PAPER NUMBER
2124	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>03 July 2001</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-22</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☐ Claim(s) <u>1-22</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>03 July 2001</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is responsive to the application filed July 3, 2001.

       Claims 1-22 have been submitted for examination.

Oath/Declaration

2.   The oath or declaration is still defective, i.e. without signature execution. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02. It was not executed in accordance with either 37 CFR 1.66 or 1.68.

       As per the communication submitted by Applicant and filed 9/24/2001, it was indicated that a duly executed Declaration and Power of Attorney should be included in the content of the communication and this was in response to the Notice of missing parts (for declaration without proper signature) mailed 8/21/01. But the supposedly corrected Declaration and Power of Attorney is found to be still missing in the present application file. Examiner would suggest that Applicant re-submit the above presumed corrected Declaration and Power of Attorney when Applicants file the response to this current Office Action.

Claims Objections

3.   Claims 2, 8, 16, 21 are objected to because of the following informalities: the recited limitation 'determining the application program installer incorrectly identified a successful installation ... on the first server' is not formulated with standard English constructs and almost leads to a form of idiomatic English. One interpretation of such incongruously phrased limitation is: determining from the application program installer that the installation of the update to the network resources on the first server is identified as an incorrect installation.

4.   Claim 13 is objected because the limitation POD is an acronym and is not spelled out at

least once in the claim. POD is interpreted as Point of Distribution as one alternative.

Correction is required.

Abstract

5.   Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

As per the instant abstract, the allowed maximum length of 150 words has been

exceeded. Correction is required.

Specification

6.   The specification is objected to because of the summary section is missing.

37 CFR 1.73. Summary of the invention.

A brief summary of the invention indicating its nature and substance, which may include a statement of the object of the

invention, should precede the detailed description. Such summary should, when set forth, be commensurate with the invention as

claimed and any object recited should be that of the invention as claimed.

As per the instant specification, there is no section pertaining to 'Summary of Invention'

according the format required as shown below.

Content of Specification

(a)   Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

(b)   Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.

(c)   <u>Statement Regarding Federally Sponsored Research and Development</u>: See MPEP § 310.

(d)   <u>Incorporation-By-Reference Of Material Submitted On a Compact Disc:</u> The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, <u>Reference to a "Microfiche Appendix"</u>: See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

(e)   <u>Background of the Invention</u>: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:

       (1)   <u>Field of the Invention</u>: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

       (2)   <u>Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98</u>: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

(f)   <u>Brief Summary of the Invention</u>: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(g)   <u>Brief Description of the Several Views of the Drawing(s)</u>: See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(h)   <u>Detailed Description of the Invention</u>: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

(i)   <u>Claim or Claims</u>: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

(j)   <u>Abstract of the Disclosure</u>: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

(k)   Sequence Listing, See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing
        applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See
        MPEP § 2421.02.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
manner in which the invention was made.

8.   Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basani et al.,

USPN: 6,748,447 (hereinafter Basani), in view of Mathur, USPN: 5,008,814 (hereinafter

Mathur); and further in view of Araujo et al., USPubN: 2001/0047406 (hereinafter Araujo).

As per claim 1, Basani discloses a method comprising:

providing an update for altering network resources of a customer served through one or

more servers (e.g. *notifies the user, browser-based User interface* -- col. 5, lines 19-62 – Note:

user request for a alteration being notified via an interface is equivalent to update for altering

resources of a user serviced via a group of servers);

selecting a first server of the cluster of servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program to install the update to the resources of the one or more

servers (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose backing up a starting configuration of the first server and

utilizing the program installer to update the first server and determining whether to restore the

starting configuration of the first server with a backup-restore application program. However,

Basani does disclose the concept of commit an requested assignment in conjunction with backup

(col. 19, lines 37-57). In a cluster of network devices wherein a leader device is being

established for intra-cluster communication to receive and execute a command for update

analogous to Group Leader of Basani, Mathur also discloses providing an update to be installed

at a leader machine, one chosen first of the cluster of devices, and such upgrade software being

tested before being dispatched to the rest of the cluster's nodes (e.g. Fig. 1; col. 4, lines 52 to col.

5, line 6; col. 6 lines 3-10) and also discloses determination for roll-out in case of failure during

installation on any devices in the cluster (e.g. Fig. 2). It would have been obvious for one of

ordinary skill in the art at the time the invention was made to provide a trial machine, e.g. a first

server as claimed, as taught by Mathur and implement the update installation trial to this first

machine among the cluster of servers by Basani so that upon failure thereof, determine to

execute a backup-restore program to that trial machine as suggested by Mathur. Based on the

concept to try before commit as suggested by Basani and further enhanced by Mathur, one skill

in the art would be motivated to do this because it is more resource-efficient to apply a trial on

one sample chosen among a group of target machine and would make it easier to recover should

a failure is detected upon such lead trial as suggested by Mathur.

Nor does Basani disclose that the network resources of a customer are hosted on one or

more hosting servers of a hosting service; and that that the clusters of servers are hosting servers.

Basani discloses a content management service reminiscent of hosting service having interface

though which user can request application execution or data alteration or retrieval (e.g. Fig. 2)

and to effect transaction type checking as well as access privileges verification (content dist –

Policy, browser-based policy control -Fig. 1). Araujo, in a method using a intermediate service

analogous to the content management center by Basani situated between the internet users and a

private network to servers, discloses hosting of remote customer via a web-based browser

interface at a service enablement platform(*SEP-* pg. 4, para 0032-0037). It would have been

obvious for one of ordinary skill in the art at the time the invention was made to provide a

hosting capability to the content management service by Basani using the hosting platform as

suggested by Araujo, because of the known benefits that come with hosting services, i.e. hosting

application for a thin-client paradigm as mentioned by Araujo but also providing faster control

over and retransmission of users requests that would otherwise demand time-consuming

communications and resources required to be allocated among the remote users, thereby possibly

burden network communication bandwidth

As per claim 2, Basani only discloses backup for roll back but does not specifically

disclose determining the application program installer of the update to the resources of the first

server to be incorrect and upon which restoring the starting configuration with the backup-restore

program. But this limitation has been addressed in claim 1 above using Basani's commit and

rollback teachings in conjunction with Mathur's trial installation applied to a first node prior to

dispatching to the rest of the clusters and roll-back program.

As per claims 3 and 4, Basani does not disclose selecting a second server of the hosting

server but Mathur teaches committing being propagated from the master task node to a slave

node using selective distribution (e.g. *exclude nodes ... not appropriate* - col. 8, lines 23-65 –

Note: exclude inappropriate nodes is equivalent to selecting a second server) to the rest of the

servers and distributing a successfully tried software to the rest of the cluster nodes as mentioned

in claim 1; hence the combination as set forth in claim 1 is herein used to address the limitation

as to selecting a second server and replicating the first server onto a second server to apply the update as well as utilizing the program installer to apply the update on the second server because of the same reasons included in the corresponding rejection of claim 1.

As pre claim 5, Basani (in view of Mathur) does not explicitly disclose that an update comprises differences between the network resources of hosted customer hosted by the hosting service and a new version of such resources prepared by the customer. Official notice is taken that the concept that an update necessarily encompasses a difference between a current version held by a customer and a newer version to be updated to and being requested by the customer within his/her preparing interface tool/environment is a well known concept at the time the invention was made. Applying this concept to the altering of network resources by Basani and upgrade of cluster nodes as taught by Mathur, the limitation as to the update having a difference as taught by the above notice would have been obvious because there would be no need to update should there be no difference between the current version of resources at the customer's environment and the version held at the server level.

As per claim 6, Basani teaches update of data files and applications and records (e.g. database 68, file list/delta, versioning – Fig. 2)

As per claim 7, Basani discloses a machine readable medium having program instructions for performing:

providing an update for altering network resources of a customer served through one or more servers(e.g. *notifies the user, browser-based User interface* -- col. 5, lines 19-62 – Note: user request for a alteration being notified via an interface is equivalent to update for altering resources of a user serviced via a group of servers);

selecting a first server of the cluster of servers (group leader 30a-b – Fig. 1);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program to install the update to the resources of the one or more

servers (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose backing up a starting configuration of the first server and

utilizing the program installer to update the first server and determining whether to restore the

starting configuration of the first server with a backup-restore application program. Nor does

Basani disclose that the network resources of a customer are hosted on one or more hosting

servers of a hosting service; i.e. the clusters of servers are hosting servers.

But these limitations are already addressed in claim 1 using the combination of Basani,

Mathur, and Araujo's teachings.

As per claims 8-10, refer to corresponding rejection as set forth in claims 2-4

respectively.

As per claims 11-12, refer to corresponding rejection as set forth in claims 5-6

respectively.

As per claim 13, Basani discloses a system for implementing a new use for an

application program installer operable to install an application program (e.g. *executables ... to*

install – col. 21, lines 39-52) and rollback an installation if it appears unsuccessful, and a

backup-restore program to backup and restore (e.g. col. 19, lines 39-62) a configuration of a

machine, the system comprising:

a public network coupling a customer and a content management manager (e.g. *content*

creators, CCM – Fig. 1);

a private network coupling a content management manager, a content distributor (*distribution server 16* – Fig. 1), and a POD comprising comprising servers for hosting network resources of the customer (*back-end servers* – Fig. 1);

wherein an update from a customer to the network resources being hosted by a POD is received over the public network by the CMM server of front-end servers network to the content distributor which is configured to select a first server among a cluster of back-end servers (Fig. 1),

utilize backup-restore program to backup a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilize an application program to install the update to the resources of the one or more servers of the POD (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose a firewall coupling a private network of hosting servers with a public network over which the customer upgrade is being formed and sent over to the private network to the content distributor to update the resources hosted by the POD. As for the firewall limitation, the CMM by Basani is reminiscent of a firewall in terms of policies to filter transaction across the outside network and the back-end servers (e.g. col. 5, lines 15-45; Fig. 1) and is designed to communicate upgrade request from authoring client to the back-end servers or POD (col. 5, lines 19-62). Araujo, in a system using a service enablement platform (SEP) situated between the back-end servers and the internet users, discloses a firewall separating the internet and the private network in which the SEP, acting like a content distributor, communicates with the POD (e.g. *Firewall 57, SEP 200* - Fig. 1). At the time the invention was made, setting a firewall to separate enterprise back-end services from broad band wide area

network was a known concept. In view of the policies enforced to commit some of transaction as

disclosed by Basani, it would have been obvious for one of ordinary skill in the art at the time the

invention was made to provide a firewall in addition to the Basani's CMM so to delegate firewall

functionalities as mentioned by Araujo on top to the distribution and synchronization tasks taken

by the CMM. One skill in the art would be motivated to do so because this would increase

protection for data integrity inside the private network, i.e. back-end servers, such as being well-

known in the art of using firewalls as suggested via Araujo's teachings.

Basani does not disclose utilizing backing up a starting configuration of the first server

and utilizing the program installer to apply the update the resources hosted by the POD. Nor

does Basani disclose that the POD comprises hosting servers, that the network resources of a

customer are hosted on one or more hosting servers of the POD, i.e. that the clusters of servers

are hosting servers belonging to the POD (Note: a cluster of server to provide a common

enterprise of services protected by a private network is equivalent to a POD, and this is disclosed

by Basani in view of Araujo).

But these above limitations are already addressed in claim 1 using the combination of

Basani, Mathur, and Araujo's teachings.

As per claim 14, Basani disclose a first network communicating a client attempts for

network resources being received by a front-end server and provided over the POD of the back-

end (Fig. 1); but does not disclose access attempt for network resources being received by a

firewall; but this firewall implementation has been addressed in claim 13 and is rejected herein

using the same rationale as set forth therein.

As per claim 15, Basani discloses a content distributor for backups and restorations (e.g. backups, restorations - col. 5, lines 15-35) but does not specify restoring the configuration of the first server. But this limitation has been addressed in claim 1 using Mathur's teachings.

As per claims 16-17, refer to corresponding rejection as set forth in claims 2-3 respectively.

As per claims 18-19, these claims correspond to claims 4-5 and are rejected with the corresponding rejection as set forth therein respectively.

As per claim 20, Basani discloses a method for implementing a new use for an application program installer operable to install an application program (e.g. *executables ... to install* – col. 21, lines 39-52) and rollback an installation if it appears unsuccessful, and a backup-restore program to backup and restore (e.g. col. 19, lines 39-62) a configuration of a machine, the method comprising the steps of :

providing an update for altering(e.g. *notifies the user, browser-based User interface --* col. 5, lines 19-62 – Note: user request for a alteration being notified via an interface is equivalent to update for altering resources of a user serviced via a group of servers);

selecting a first server of the cluster of servers (e.g. *group leader 30a-b* – Fig. 1);

backing up a starting configuration at one or more servers (e.g. col. 19, lines 39-62); and

utilizing an application program to install the update to the resources of the one or more servers (e.g. *executables ... to install* – col. 21, lines 39-52).

But Basani does not disclose backing up a starting configuration of the first server and utilizing the program installer to update the first server and determining whether to restore the starting configuration of the first server with a backup-restore application program. Nor does

Basani disclose that the network resources of a customer are hosted on one or more hosting

servers of a hosting service; i.e. the clusters of servers are hosting servers.

But these limitations are already addressed in claim 1 using the combination of Basani,

Mathur, and Araujo's teachings.

As per claims 21-22, refer to corresponding rejection as set forth in claims 2-3

respectively.

Conclusion

9.   Applicant's arguments filed 12/2/2003 have been fully considered but they are moot in

view of new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Tuan A Vu whose telephone number is (703)305-7207. The

examiner can normally be reached on 8AM-4:30PM/Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kakali Chaki can be reached on (703)305-9662.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9306 (for formal communications intended for entry)

or: (703) 746-8734 (for informal or draft communications, please label

"PROPOSED" or "DRAFT" – Please consult Examiner before use)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal

Drive, Arlington. VA. , 22202. 4th Floor(Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 305-3900.

VAT
June 13, 2004

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100